



OFFICE OF THE ATTORNEY GENERAL
HONOLULU, HAWAII

2005 JUN 11 A 10:08

INSURANCE DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Claim of)	ATX-2003-198
)	
OLGA SABADO,)	COMMISSIONER'S
)	FINAL ORDER
Claimant,)	
)	
vs.)	
)	
ENTERPRISE RENT A CAR,)	
)	
Respondent.)	
)	

COMMISSIONER'S FINAL ORDER

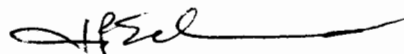
On November 22, 2004, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law, and Recommended Order in the above-captioned matters to the Insurance Commissioner, Department of Commerce and Consumer Affairs ("Commissioner"). Copies of the Hearings Officer's recommended order were also transmitted to the parties. The parties were subsequently provided an opportunity to file exceptions; however, no exceptions were filed.

Upon review of the entire record of these proceedings, the Commissioner adopts the Hearings Officer's recommended decision as the Commissioner's Final Order. The Commissioner hereby finds and concludes that Claimant Olga Sabado ("Claimant") has established by a preponderance of the evidence that Respondent Enterprise Rent A Car's ("Respondent") denial was improper. As such, the Commissioner, in the exercise of his discretion pursuant to Hawaii Revised Statutes ("HRS") §431:10C-211(a), awards to Claimant reasonable attorney's fees of \$2,057.28 and reasonable costs of \$368.88, that she incurred in pursuit of this matter, with such amounts to be paid by Respondent directly to

Claimant's attorney. Claimant is also entitled to interest as provided by HRS § 431:10C-304(4).

JAN 11 2005

DATED: Honolulu, Hawaii, _____.



J.P. SCHMIDT
Insurance Commissioner
Department of Commerce and
Consumer Affairs



INSURANCE DIVISION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2004 NOV 22 A 10:37

In the Matter of the Claim of)	ATX-2003-198
)	
OLGA SABADO,)	HEARINGS OFFICER'S
)	FINDINGS OF FACT,
Claimant,)	CONCLUSIONS OF LAW,
)	AND RECOMMENDED
vs.)	ORDER
)	
ENTERPRISE RENT A CAR,)	
)	
Respondent.)	
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. BACKGROUND

By letter dated December 1, 2003, Olga Sabado ("Claimant"), filed a request with the Insurance Commissioner, Department of Commerce and Consumer Affairs, State of Hawaii ("Commissioner"), for review of a denial of no-fault insurance benefits dated October 2, 2003 which had been issued by Cambridge Integrated Services Group, Inc. ("Cambridge"), as the insurer for Enterprise Rent A Car ("Respondent").

The request for hearing were transmitted to the Office of Administrative Hearings and a Notice of Status Conference and Order Regarding Pre-Hearing Statements was duly served on the parties.

On August 12, 2004, this matter came on for hearing before the undersigned Hearings Officer with Claimant represented by Melvin Y. Agena, Esq. and with Respondent represented by Wayne S. Sakamoto, Esq.

The Hearings Officer, having reviewed and considered the argument of the parties, together with the exhibits, records and files herein, hereby renders the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. On April 10, 2003, Claimant was involved in a motor vehicle accident when the vehicle she was driving was broad-sided by another vehicle while attempting to make a left turn. Claimant's vehicle sustained damages of approximately \$3,000.00.

2. Claimant suffered no apparent injuries as a result of the accident.

3. On April 17, 2003, while under the no-fault insurance coverage of Cambridge, Claimant was involved in another motor vehicle accident when the vehicle she was renting was rear-ended by another vehicle.

4. Following the accident, Claimant complained of pain to her neck, shoulder and back and was treated by Dr. Nicanor Joaquin.

5. On April 19, 2003, Dr. Joaquin noted that:

Ms. Olga Sabado was the driver of a car wearing seatbelt. Their car was in complete stop prior to turning right. Suddenly their car was hit from the rear. At the point of impact patient was pushed forward and backwards. Patient momentarily loss consciousness. She had neck pain upper back lower back and right shoulder pain.

Patient's present complaints include neck pain upper back lower back and right shoulder pain. Has numbness right hand. Lower back pain radiates to her buttocks.

* * * *

Apportionment: Patient had a car accident April 10, 2003. Apparently a car hit her on the right side of her vehicle. Patient was not hurt and did not see a doctor. Patient had another car accident April 17, 2003. Patient momentary loss of consciousness. When she regained consciousness she had neck pain upper back lower back and right shoulder pain. All medical bills including diagnostic studies, physical therapy medications, consultation as well as loss of wages are 100% related to April 17, 2002 [sic] accident, there is no apportionment.

* * * *

Diagnoses

Head Concussion
Neck Spasm Numbness Right Hand
Upper Back Spasm
Lower Back Spasm Radiating to Buttocks
Tendinitis Right Shoulder

* * * *

6. On June 27, 2003, Claimant underwent an MRI at St. Francis Medical Center. The MRI of Claimant's cervical spine indicated a "C5-6 small central disc protrusion eccentric to the right not contracting the cord."

7. In or about July 2003, Claimant was referred by Dr. Joaquin to Dr. Cleveland Wu, a neurologist.

8. On July 23, 2003, Dr. Wu conducted an electromyography of Claimant's upper right limb. Dr. Wu's impression was "right C7 radiculopathy, mild, no axonal degeneration."

9. At the request of Respondent, Claimant was examined by Dr. Ronald Kienitz, D.O. on or about August 18, 2003. Dr. Kienitz's diagnosis were:

1. Subjective musculoligamentous pain complaints of the cervical/dorsal spine without objective findings;
2. C4-5 disk bulge, probably of no clinical significance and predating incident of record;
3. Insignificant impact motor vehicle accident incident of April 17, 2003 of no logical correlation to the above;
4. Secondary gains as an instigator for pain complaints appears to be a consideration.

10. On August 18, 2003, Dr. Kienitz prepared a report of his examination of Claimant.

11. In his report, Dr. Kienitz responded to various questions presented by Respondent:

* * * *

“You also ask that in my best medical opinion, are her current complaints attributable 100% to the accident of April 17, 2003?”:

In response to this, I would answer that I do not feel that any of her current complaints are due in any way to that incident. I fully agree that the incident was essentially a non-event and quite literally was a minimal bump in the road for this patient. She has a prior history of significant problem to her cervical spine for which she sought legal representation and received a settlement. It is very likely that she went through extensive clinical evaluation and treatment prior to receiving that settlement. Secondly, she had a very significant motor vehicle accident only one week prior to the incident of record, yet for some reason she claims absolutely no injury from that in spite of the fact that this was very much more significant than the incident of record. It is simply not logical that she is having the extent of discomfort that she is claiming, or that it is caused by the incident of April 17, 2003.

* * * *

12. On October 2, 2003, Cambridge issued a denial of no-fault benefits to Claimant and was based on Dr. Kienitz’s report.

13. On October 17, 2003, Dr. Joaquin noted:

Patient was involved in a car accident dated April 17, 2003 and persists to have head concussion, neck spasm numbness right hand, upper back spasm, lower back spasm radiates to buttocks and tendinitis right shoulder.

* * * *

She was not hurt [in the April 10, 2003 accident] and did not see a doctor. Patient had another accident on April 17, 2003 and she was momentarily loss consciousness. When she regained consciousness she had neck pain, upper back pain, lower back pain and right shoulder pain. All medical bills, including diagnostic studies, physical therapy, medications, consultation as well as loss wages are 100% related to the April 17, 2003 accident, there is no apportionment.

III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

The issue presented for determination is whether Respondent's October 2, 2003 denial of no-fault benefits was proper. In order to prevail, Claimant has the burden of proving by a preponderance of the evidence that the denial was improper. More specifically, Claimant must prove that her complaints were causally related to the April 17, 2003 motor vehicle accident.

According to the evidence, Claimant complained of pain to her neck, back and shoulder following the April 17, 2003 motor vehicle accident. There was no evidence of Claimant having similar complaints in connection with the April 10, 2003 accident. Apparently for this reason and the fact that the April 17, 2003 accident involved a rear-end collision¹, Dr. Joaquin opined that the injuries and complaints were the result of that accident. Moreover, a subsequent MRI of Claimant's cervical spine indicated a C5-6 disc protrusion and an electromyography performed by Dr. Wu indicated right C7 radiculopathy.

On the other hand, Dr. Kienitz's opined that Claimant's injuries were not causally related to the April 17, 2003 accident on the basis of "a prior history of significant problem to her cervical spine for which she sought legal representation and received a settlement" and the fact that Claimant "had a very significant motor vehicle accident only one week prior to the incident of record, yet for some reason she claims absolutely no injury from that in spite of the fact that this was very much more significant than the incident of record." Dr. Kienitz's opinion appears to be an assessment of Claimant's motivations rather than on an objective medical evaluation of her injuries in relation to a rear-end collision. On balance, the Hearings Officer must conclude that Claimant has established by a preponderance of the evidence that her injuries were caused by the April 17, 2003 motor vehicle accident.

¹ Dr. Joaquin noted that "[a]t the point of impact patient was pushed forward and backwards." In the April 10, 2003 accident, Claimant's vehicle was broadsided while attempting to make a left turn.

IV. RECOMMENDED ORDER

For the reasons set forth above, the Hearings Officer recommends that the Commissioner find and conclude that Claimant has established by a preponderance of the evidence that Respondent's denial was improper. The Hearings Officer further recommends that the Commissioner in the exercise of his discretion pursuant to Hawaii Revised Statutes §431:10C-211(a) award to Claimant reasonable attorney's fees of \$2,057.28 and reasonable costs of \$368.88, that she incurred in pursuit of this matter, with such amounts to be paid by Respondent directly to Claimant's attorney.

DATED: Honolulu, Hawaii, NOV 22 2004



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs